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A. Aguirre
Asst. Dir.

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON 20548**

FILE: B-189685

DATE: November 2, 1977

MATTER OF: Nguyen-kim-Son - Claim for compensation

DIGEST: Former Vietnamese employee of Department of Army in Da Nang area claims compensation for a biweekly pay period ending December 5, 1971, and for Tet bonus for period January 1, 1971, through December 6, 1971, as he states he never received payments. Department of Army has been unable to locate claimant's pay records for period of claim and claimant is unable to provide any documentation in support of claim. Claim may not be allowed as there is no evidence which clearly establishes liability on part of Government.

By letter dated August 29, 1977, Mr. Nguyen-kim-Son appealed the action by our Claims Division in Certificate of Settlement dated June 21, 1977, which denied his claim for compensation incident to his employment in the Republic of Vietnam by the Department of the Army. Mr. Son asserts that he was not paid his biweekly salary for the last pay period beginning in November 1971, and ending on or about December 6, 1971, and that he also did not receive his Tet bonus for the period January 1, 1971, through December 6, 1971.

The record shows that during the period covered by the claim Mr. Son was employed by the Department of the Army in the Da Nang area Civilian Personnel Office, as a Wage and Classification Specialist and then as a Supervisory Personnel Management Specialist, VGS-11, step 2. On April 28, 1972, Mr. Son wrote to the Civilian Personnel Officer in the Can Tho area stating that he had not received his pay for the last biweekly pay period of service in the Da Nang area Civilian Personnel Office and that he also had not received payment of any of his 1971 Tet bonus for the period January 1, 1971, through December 6, 1971. On December 15, 1972, Mr. Son pursued his claim for payment by writing a letter, to the Director, Office of Civilian Personnel, Saigon, in which he restated the basis of his claim.

On November 12, 1975, the U.S. Army Support Command, Hawaii, submitted a request to the Director, National Personnel Records

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Center, St. Louis, Missouri, requesting that Mr. Son's payroll records be forwarded to them so that an appropriate determination could be made on his claim. The National Records Center was unable to locate Mr. Son's personnel and payroll files. The record shows that a subsequent search at the Records Center as well as at the Department of Army failed to locate the pertinent files. By letter of May 31, 1977, the U.S. Army Finance and Accounting Center, Indianapolis, Indiana, informed our Claims Division that the finance and accounting office which originally paid Mr. Son had been deactivated and that the Army had been unable to locate Mr. Son's pay records. The Army has recommended that Mr. Son's claim not be paid as there is no evidence which would support the liability of the Government. In a letter to our Claims Division dated April 19, 1977, Mr. Son states that he is unable to provide any documentation in support of his claim as he left behind his personnel and pay records when he hurriedly evacuated Vietnam in late April 1975 to escape the advancing communist troops.

The submission of a claim to this Office does not create a presumption of the claimant's entitlement. In presenting a claim against the United States the burden is on the claimant to furnish substantial evidence to clearly establish liability on the part of the Government. B-178654, April 8, 1974. Accordingly, the regulations of this Office governing claims settlements require a claimant to support his claim by furnishing acceptable evidence. In this connection 4 C.F.R. 31.7 provides as follows:

"31.7 Basis of claim settlements.

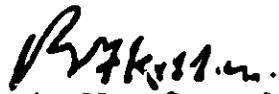
Claims are settled on the basis of the facts as established by the Government agency concerned and by evidence submitted by the claimant. Settlements are founded on a determination of the legal liability of the United States under the factual situation involved as established by the written record. The burden is on claimants to establish the liability of the United States, and the claimants' right to payment. The settlement of claims is based upon the written record only." (Emphasis supplied.)

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As stated above, Mr. Son is unable to provide this Office with documentation which would establish his right to payment.

Ordinarily, proof of the validity of a claim can be found in Government records. However, in this instance, the agency records necessary to prove or disprove the validity of the claim have been either lost or inadvertently destroyed. Accordingly, there is no basis on which the claim may be allowed. See Matter of Len Dock Louie, B-183900, August 3, 1976.

In view of the above, since no records supporting this claim have been presented to this Office, the action taken by our Claims Division in the matter is sustained.


Acting Comptroller General
of the United States